

Annual Report Fiscal Year 2017

Contents

Overview.....	2
Mandates and Requirements	3
Performance Measures Summary	5
Workplace Conflict Consultation Program	6
Training.....	8
AdviceLine	10
Administrative Rulings	11
Grievance Hearings.....	12
EEO Compliance	13
EEO Investigations.....	14
Contact Information	14

Office of Equal Employment and Dispute Resolution

Department of Human Resource Management

Overview

The Code of Virginia requires the Department of Human Resource Management (DHRM) to establish comprehensive programs 1) of employee relations management that includes alternative processes for resolving employment disputes, and 2) to ensure equal employment opportunity to applicants for state employment and to state employees in all incidents of employment. Equal employment opportunity and employee relations are integral components of human resource management. The Office of Equal Employment and Dispute Resolution (EEDR) is responsible for executing these programs through the following core functions:

Workplace Conflict Consultation Program

Combining proactive services to assist state agencies and employees with more effective management of workplace conflict, including mediation, conflict coaching, consultations, and training.

Grievance Procedure

Required by the Code of Virginia, the state grievance procedure provides due process to state employees and ensures adherence to policy and law.

EEO Compliance Program

As required by state policy, the Equal Employment Opportunity (EEO) Compliance Program determines whether agencies' human resource management practices result in disparate impact against persons of protected classes.

EEO Investigations

EEDR investigates and resolves complaints of illegal discrimination filed by state employees and applicants for state employment consistent with applicable law, policy, and the Governor's Executive Order on Equal Opportunity.

Training

In addition to conflict management skill-building trainings, EEDR provides technical training on matters such as the grievance procedure, disciplinary practices, and EEO compliance.

Consultations and AdviceLine

EEDR provides guidance to state agencies and employees concerning nearly all employee relations matters such as workplace conflict, grievances, and equal employment opportunity.

Mandates and Requirements

Code of Virginia § 2.2-1201(10), Equal Opportunity, requires EEDR to establish and administer a program to ensure equal employment opportunity to applicants and to state employees in all incidents of employment;

Governor's Executive Order No. 1 (2014), Equal Employment Opportunity, prohibits state agencies from engaging in unlawful employment discrimination and authorizes OEES to investigate and resolve such complaints;

Code of Virginia § 2.2-1202.1, Employment Dispute Resolution, requires EEDR to:

Establish a comprehensive program of employee relations management that includes alternative processes for resolving employment disputes;

Establish the grievance procedure and a statewide mediation program;

Adopt rules and set hearing officer fees for grievance hearings;

Direct full compliance with the grievance procedure process;

Investigate allegations of retaliation as the result of use of or participation in the grievance procedure or of reporting, in good faith, an allegation of fraud, waste, or abuse to the Fraud, Waste and Abuse Hotline and advise the agency head of the findings;

Render final decisions, containing the reasons for such decision, on all matters related to access to the grievance procedure, procedural compliance with the grievance procedure, and qualification for hearing;

Establish a process to select, on a rotating basis, hearing officers for grievance hearings; train and assign such hearing officers to conduct grievance hearings; evaluate the quality of their services to determine eligibility for continued selection; and, if deemed ineligible for continued selection, establish policies for removing such hearing officers from consideration for future selection;

Establish a training program for human resources personnel on employee relations management and employment rights and responsibilities;

Implement a comprehensive training and instructional program for all supervisory personnel that includes the role of the grievance procedure, methods for supervisors to instruct nonsupervisory personnel in the use of the grievance procedure;

Provide information upon the request of any employee concerning personnel policies, regulations, and law applicable to the grievance procedure and counsel employees in the resolution of conflict in the workplace;

Conduct such training seminars and educational programs for the members and staff of agencies and public bodies and other interested persons on the use of dispute resolution proceedings as the DHRM Director determines appropriate.

Code of Virginia § 2.2-2903(5), Veterans Preference, requires that “additional consideration” shall be given to veterans who have a service-connected disability rating fixed by the United States Veterans Administration.

29 U.S.C. §§ 621-633(a), Age Discrimination in Employment Act of 1967, as amended, prohibits discrimination in all privileges and conditions of employment against persons age 40 and over;

42 U.S.C. Chapter 126, Americans with Disabilities Act of 1990, as amended, prohibits discrimination in all privileges and conditions of employment against qualified persons with a disability;

42 U.S.C. § 2000ff, The Genetic Information Nondiscrimination Act of 2008, prohibits discrimination in health coverage and employment based on genetic information;

29 U.S.C. § 206, Equal Pay Act of 1963, prohibits differentiation in pay for equal work based on gender;

8 U.S.C. 1324 a & b, Immigration Reform and Control Act of 1986, prohibits discrimination based on national origin and citizenship status in all privileges and conditions of employment;

Lilly Ledbetter Fair Pay Act of 2009, amending Title VII of the Civil Rights Act of 1964 (42 USC 2000e-5(e)), the Age Discrimination in Employment Act, and the Americans With Disabilities Act to declare that an unlawful practice occurs when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to the decision or other practice, or when a person is affected by the decision or practice, including each time wages, benefits, or other compensation is paid;

42 U.S.C. 2000(e)(k), Pregnancy Discrimination Act of 1978, requires employers to treat women affected by pregnancy, childbirth, and related medical conditions, the same as other employees for all employment related purposes;

42 U.S.C. 2000h 2, Title IX of the Education Amendments of 1972, prohibits discrimination based on gender in all privileges and conditions of employment in education programs or activities that receive federal financial assistance;

42 U.S.C. 2000C-2000E-17, Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in all privileges and conditions of employment due to race, color, national origin, gender (including sexual harassment), and religion;

29 U.S.C. § 1607.18, Uniform Guidelines on Employee Selection Procedures, requires employers to determine whether tangible employment practices result in disparate impact against minorities and women, and to take affirmative corrective action if found;

Performance Measures Summary

EEDR continues to stress customer satisfaction as its priority and Fiscal Year 2016 was another successful year in that regard. EEDR maintained a high level of expediency in its core functions, while also providing proactive services for resolving workplace conflict more effectively. EEDR's mission is to provide state agencies and employees with a breadth of resources to address workplace conflict effectively.

Customer Service

Goal: 90% of respondents rate EEDR services received as good or better.

Result: 97% satisfaction rate.

Workplace Conflict Consultation Program

The Workplace Conflict Consultation Program includes four proactive approaches for resolving workplace disputes at the earliest possible level. These effective approaches include conflict coaching, conflict management skill building trainings, and one-on-one phone consultations, in addition to further utilization of EEDR's existing statewide workplace mediation program. DHRM initiated the Workplace Conflict Consultation Program in April 2014 as a step in adopting a statewide approach to integrated conflict management, providing the state workforce with specialized services only available in the private sector at higher costs. The primary purpose of the Program is to provide state agencies and employees with the training and tools to more effectively address workplace conflict on their own without resorting to outside complaint procedures. The Program's innovative approach of coupling a statewide mediation program with three additional proactive, early intervention services ultimately prevents and alleviates conflict to allow agency managers to focus more time and effort on service delivery for the Commonwealth and its citizens. In fiscal year 2017, 754 state employees participated in at least one of the four early-intervention Workplace Conflict Consultation Program services.



Conflict Coaching and Consultations

EEDR's conflict coaching and consultations are designed to help managers and employees better understand their typical responses to conflict. When utilized, an individual or a 360 Conflict Dynamics Profile assessment is administered to the employee to identify the most problematic areas. EEDR then provides conflict coaching sessions and helps the employee create an action plan to outline goals, set target dates, and describe methods to hold the employee accountable. Similarly, the one-hour confidential phone consultation service is used for in-depth, interpersonal, organizational, evaluative, and/or peer relationship conflicts in the workplace.

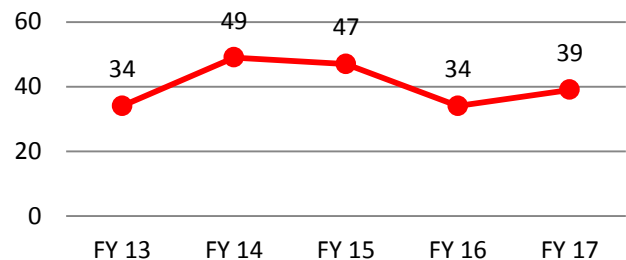
In FY 2017, EEDR conducted 26 coaching sessions and 24 one-hour consultations. Further, 100% of coaching clients rated these services as good or better. EEDR's coaching and consultation services can have a profound impact on the client and other surrounding employees in the workplace. Indeed, EEDR has used the coaching model for teams in conflict, whereby the team's manager is coached to better address conflict directly, rather than resorting to an outside consultant to review the workplace. This places the most accountability with the manager to improve the effectiveness and output of a unit.

Mediation

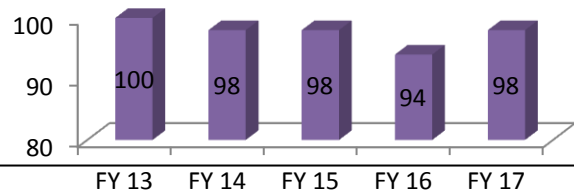
EEDR administers the Commonwealth's statewide workplace mediation program. This program is a voluntary, confidential process through which EEDR mediators assist state employees with expressing their thoughts and feelings associated with workplace disputes in a safe, nonjudgmental environment. The program is designed to enable employees to explore their differences and develop their own resolution to the workplace concerns. EEDR's mediation services are available to all state employees free of charge. As well as utilizing mediators on staff at EEDR, the program currently has 30 workplace mediators from the public and private sector who voluntarily commit their time to conduct EEDR mediations each year.

EEDR's mediation satisfaction rating, based on mediation participant evaluations, continues to be very high and exceed performance targets. The program achieved 98% approval this fiscal year. 80% of the mediations conducted in FY 2017 resulted in either a verbal or written agreement.

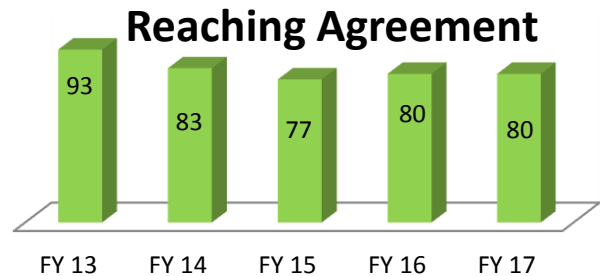
Mediation Requests



Customer Satisfaction (Mediation)



Percent of Mediations Reaching Agreement



Conflict Management Training

EEDR has also developed two conflict management skill lecture series – *Building Trust in the Workplace* and *The Importance of Emotional Intelligence* – in order to continue to provide employees with the tools necessary to appropriately respond to workplace conflict. Ten conflict management training sessions were conducted in FY 2017 for 626 participants. Additional discussion of EEDR's training initiatives are detailed below.

Training

At the beginning of FY 2017, EEDR offered six classroom training courses in the following areas:

- Handling Workplace Conflict Effectively
- Conflict Management 101
- Constructive Communication Skills
- Best Practices in Employee Discipline & Discharge
- Understanding and Using the Grievance Procedure
- Enhancing Management's Response to Employee Grievances
- Basic Grievance Hearing Skills

During FY 2017, EEDR launched two new classroom training courses:

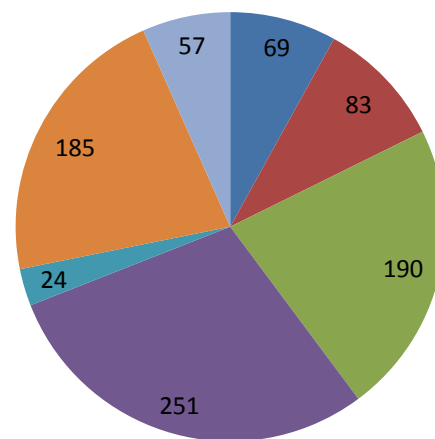
- Building Trust
- The Importance of Emotional Intelligence

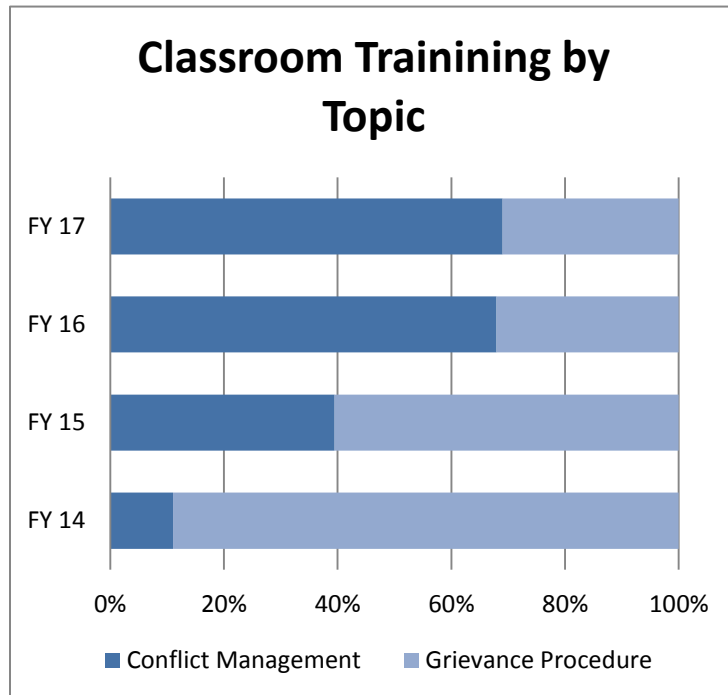
These courses were developed as a new service offering based on agency requests for training content that is shorter in length and intended for larger groups. Both courses can be delivered to groups of over 30 employees and are approximately 45 minutes in length. This initiative has allowed EEDR to deliver focused content as well as information about EEDR's conflict resolution services to larger and more varied groups of employees, potentially increasing overall service utilization.

EEDR also provides three online training courses: 1) a Workplace Dispute Resolution Service Overview, 2) Workplace Conflict Management Skills, and 3) Understanding and Using the Grievance Procedure, which are available through the Commonwealth's Learning Center.

FY 2017 Classroom Training Attendance

- Communication Skills
- Handling Workplace Conflict Effectively
- Building Trust
- The Importance of Emotional Intelligence
- Grievance Process
- Discipline and Discharge
- Hearing Skills





The total number of employees who attended classroom training courses increased significantly in FY 2017. In addition, agency demand for conflict management training has continued at high levels. EEDR provided a total of 19 training sessions at agency worksites to 859 employees overall. 593 of those attendees, or 69% of all training participants, attended a conflict management class. EEDR's two new course offerings on Building Trust and the Importance of Emotional Intelligence accounted for 51% of total attendance for the year, demonstrating the needs that agencies have statewide.

EEDR's satisfaction ratings this fiscal year, based on participant evaluations, continued at normally high levels, with 97% of attendees rating the trainings as good or better this fiscal year.

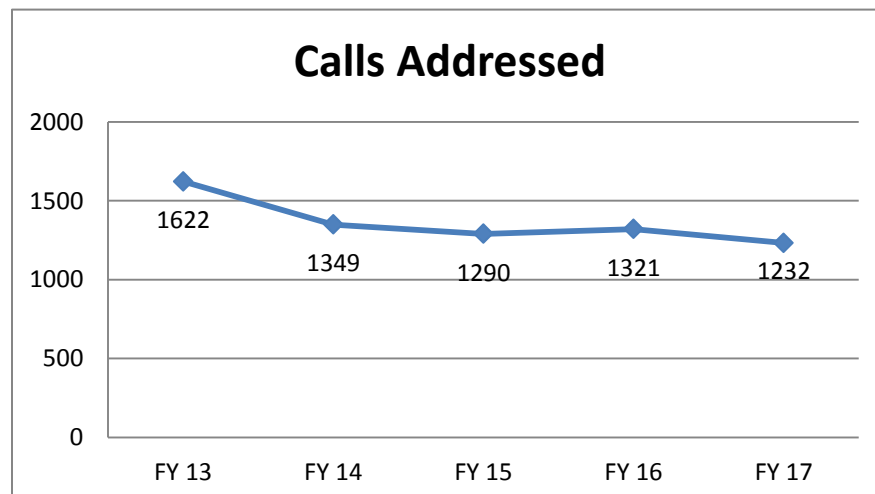
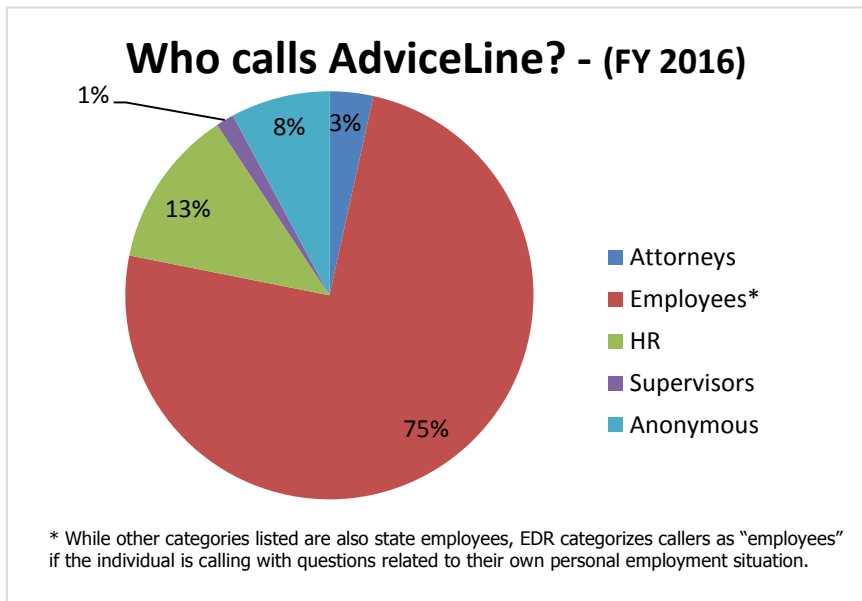
In FY 2017, EEDR demonstrated its commitment to providing high-quality conflict management training services to state employees. Continued agency demand for conflict management training confirms the value and efficacy of the investment EEDR has made in classroom training. EEDR's two new conflict management training courses have fueled training program growth and served as a vehicle for reaching larger groups of employees in need of conflict management training services. EEDR remains committed to continuing to grow its training services and expand its offerings. EEDR plans to renew training initiatives on equal employment compliance and use of equal employment tools for state agencies and managers in the coming fiscal year.



AdviceLine

EEDR consultants provide consultation on employment-related issues to state employees, human resource professionals, supervisors, managers, or anyone else in state government through the AdviceLine. Calls to the AdviceLine are confidential, toll-free, and callers may remain anonymous if they so choose. Although EDR consultants can provide a wealth of knowledge on many issues arising in state employment, it is not the role of EDR to advise callers on the action they should take or represent them in a dispute. Rather, callers are given information about options or resources available. EEDR CANNOT provide legal advice on the AdviceLine.

The vast majority of callers are state employees, but EEDR receives many calls from others, including attorneys, managers and agency human resources staff. The amount of calls received has varied in past years. However, the general trend has been fairly static in the number of calls over the past three years. There remains a need for EEDR to increase communication and outreach efforts to reach more state employees, managers, supervisors, and human resource professionals to educate about all of EEDR's services and the Office's role in properly addressing conflict in the workplace. EEDR's involvement on AdviceLine can and does help facilitate resolution of employment disputes. Further, the AdviceLine serves as the initial screening and referral for many of EEDR's early intervention services under the Workplace Conflict Consultation Program.



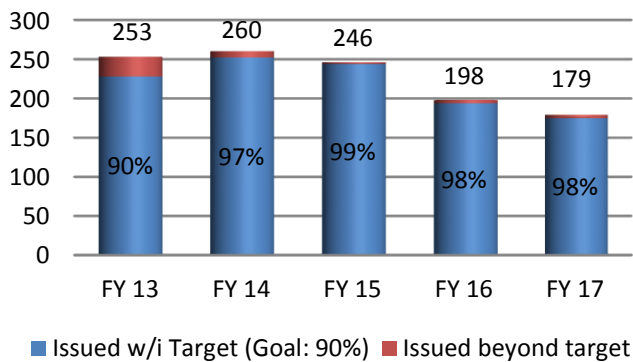
Administrative Rulings

EEDR renders final decisions through administrative rulings in grievances on procedural compliance with the grievance process and whether grievances qualify for hearing. EEDR is also responsible for responding to requests for administrative review of grievance hearing officer decisions based on party requests that the decision does not comply with the grievance procedure or state or agency policy. As the neutral administrator of the grievance process, EEDR's administrative rulings function is critical to expeditious resolution to employee grievances with proper adherence to procedural rules and substantive requirements. EEDR has kept its average turnaround rate low (at just over 21 days on average). Furthermore, EEDR met its goal of completing 90% of its rulings within 50 days, with 98% of rulings issued within the targeted deadline.

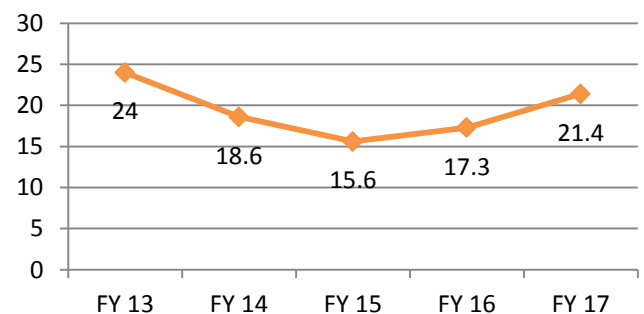
The overall number of ruling requests saw a slight decrease in FY 2016 from the prior year as overall numbers remain lower than in past cycles. EEDR continues to see a larger than average proportion of compliance rulings requested.

While EEDR received fewer ruling requests, the issues raised in these rulings have become increasingly complex over the past two years. The complexity in both facts and legal analysis of questions has led to a slight increase in the average turnaround time for completion. As efforts in training and conflict management services increase, EEDR anticipates grievance participants will seek to resolve only the more complex matters by ruling.

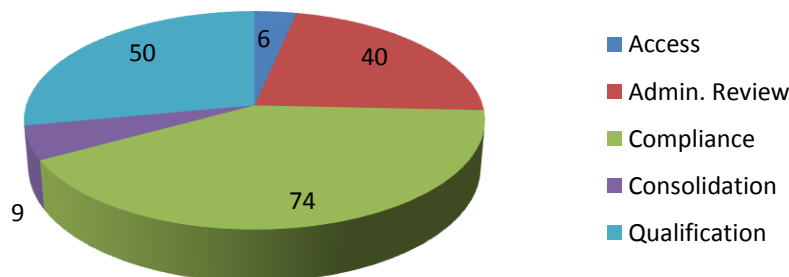
Total Rulings Issued



Average Turnaround Time (Days)



Rulings By Type - FY 2017



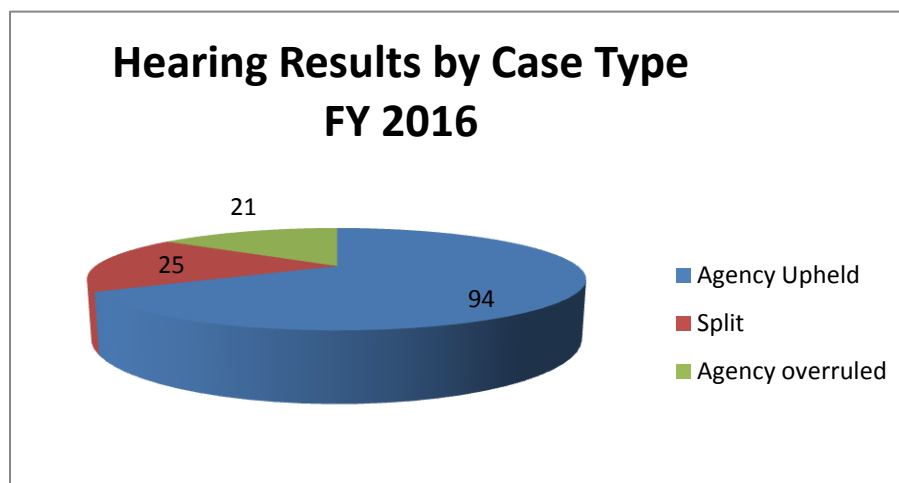
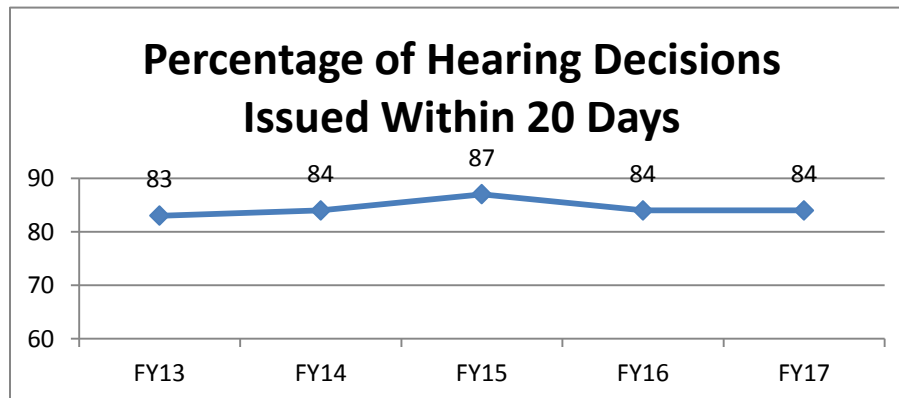
Grievance Hearings

EEDR's central role in managing the hearings program for all employee grievances is providing impartial and knowledgeable hearing officers to decide cases. EEDR assigns hearing officers to cases using one of two sources: attorneys employed by EEDR as classified state employees and attorneys who are on the list of EEDR-eligible hearing officers maintained by the Supreme Court of Virginia. The grievance procedure and Rules for Conducting Grievance Hearings require decisions to be based on the facts, policies, and law. Improving the quality of hearing decisions is always a key focus of the hearings program.

The number of hearings statewide has remained relatively static in recent years. In FY 2017, 140 hearings were held with decisions issued, compared to 151 decisions issued in FY2016. As a portion of the total number of hearings, terminations accounted for approximately 65% of hearings, consistent with the previous fiscal year.

EEDR has maintained its critical goal of emphasizing the timely issuance of hearing decisions by hearing officers. EEDR's goal for each hearing officer to issue a decision is 20 days from the close of the evidentiary record (i.e., the date of the hearing in nearly all cases). Consistent with recent years, 84% of cases for all hearing officers were decided within the 20-day target in FY2017.

Hearing results for FY2017 show that agencies were upheld in whole or in part 82% of the time (115 cases out of 140), with terminations upheld in 86% of cases (78 cases out of 91). Employees received at least partial relief in about 33% of all grievance hearings.



EEO Compliance

The Commonwealth's Equal Employment Opportunity Compliance Program consists of, among other things, the EEO Assessment Tool, EEO Calculator, and Applicant Flow component. These web-based tools include all of the statistical applications sanctioned by the US Supreme Court and the federal Equal Employment Opportunity Commission (EEOC) for determining whether agencies' employment practices result in adverse impact against protected groups. The purpose of the EEO Assessment Tool is to ensure fairness and equity in tangible employment practices, ensure compliance with relevant federal and state laws/regulations, and provide agencies with the ability to review proactively their employment practices. The EEO Calculator provides agencies with the means to assess potential disparate impact on the basis of race, gender, age (for employees 40 years and older), and veteran status concerning the prospective implementation of certain employment practices, including layoffs. The Applicant Flow component is designed to determine whether agencies' hiring practices result in disparate impact against the aforementioned groups.

Results of the EEO Compliance Program are also utilized in Commonwealth-At-A-Glance, a web-based application providing state and agency managers with easy access to current statistics and trend data relating to a variety of human resource management activities. Categories of statistics include employment levels, employee demographics, occupational distributions, recruitment, retention, compensation, recognition, performance management, training and development, health and safety, community service, fairness and equity, and management. The data includes annual updates for percentage of green (compliance with relevant federal and state laws/regulations) statewide and at executive branch agencies in fairness and equity in the implementation of each employment practice.

The EEO Compliance Review identified 130 agencies with 583 indicators of disparity (Red) for the relevant fiscal year (FY 2016). Each agency was required to submit either a legitimate non-discriminatory explanation or a corrective action plan designed to eradicate the disparity for each indicator. DHRM's Strategic Plan historically requires completion of reviews within 30 days of receipt of additional information. Reviews were completed of approximately 94% of the agencies' submissions within 30 days of receipt of additional pertinent information in FY 2017. EEDR also provided technical assistance and/or counseling to 100% of agencies that either requested assistance or were identified as needing assistance in responding to their indicators of disparity. As a result of the FY 2016 compliance review, 98.5% of all executive branch agencies were in compliance with all federal/state laws/regulations concerning non-discriminatory employment practices.

The Commonwealth's EEO-4 Report is submitted every odd-numbered year. The next Report is due in September 2017. EEDR is responsible for compiling and submitted the data required by the federal government for this report.

EEO Investigations

Federal and state anti-discrimination laws prohibit discrimination in all privileges and conditions of employment. EEDR is responsible for the investigation and resolution of complaints of illegal discrimination filed by state employees (classified, faculty, wage, or probationary) and applicants for state employment.

During FY 2017, 38 complaints of discrimination were received, involving approximately 90 separate and distinct allegations of illegal discrimination (i.e., race, gender, age, retaliation, sexual harassment, religion, national origin, sexual orientation, disability, political affiliation, and veteran's status). EEDR investigated and/or resolved 12 complaints consisting of approximately 22 allegations of unlawful discrimination. No determinations were overturned upon appeal.

Contact Information

EDR Website

www.dhrm.virginia.gov/edr

www.dhrm.virginia.gov/equal-employment-opportunity

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Richmond, VA 23219

Phone

1-888-232-3842 (AdviceLine, Hearings, Grievances, Workplace Conflict)

1-800-533-1414 (EEO Hotline)

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